**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 4000 of 2001**
**To**
**FIRST APPEAL No. 4003 of 2001**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**STATE OF GUJARAT - Appellant(s)**
**Versus**
**JAYANTILAL NARSHI & 2 - Defendant(s)**

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**Appearance :**
MR UR BHATT, AGP for Appellant(s) : 1,
RULE SERVED for Respondent(s) : 1 - 3.

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**CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

**Date : 29/03/2007**

**CAV COMMON JUDGMENT** :

The State of Gujarat has preferred these appeals under Section 54

of the Land Acquisition Act, 1894 [hereinafter referred to as 'the Act'] to challenge the judgment and award made by Civil Judge [S.D.], Rajkot dated 18/11/2000 in Land Reference Cases No. 422/1989 to 425/1989. Since these appeals involve common questions of fact and law, they are heard together and now they are being disposed of by this common judgment.

2. The respondents are the original claimants. They owned agricultural lands at village Adbalka. These lands were needed for construction of Aji-II Irrigation Scheme Main Canal. Hence, proceedings under the Act to acquire the land were initiated. Notification under section 4 was published in the Government Gazette on 22/9/1983 and the declaration under section 6 was published on 20/9/1984. Thereafter, all the necessary formalities were complied with by the Deputy Collector acting as Land Acquisition Officer and published the award under section 11 of the Act on 17/6/1985. The Land Acquisition Officer determined the market value of the land at Rs.0-90 paise per sq. mtr. The respondents, being dissatisfied with the award, made application under section 18 of the Act for making reference to the Civil Court for enhancement of the compensation. The Collector, after completing necessary formalities, forwarded the statement and relevant record along with the application for reference under section 19 of the Act to the concerned Court and ultimately proceedings were numbered as Land Reference Cases No. 422 of 1989 to 425 of 1989.

2.1. In Land Reference Case No. 422 of 1989, the respondent claimed Rs.33,630/- for the land, Rs.10,089/- for solatium and Rs.7062-30 paise for legal increase, against the Special Land Acquisition Officer's award of Rs.4540-05 ps.

2.2. In Land Reference Case No. 423 of 1989, the respondent claimed Rs.10,000/- for the land, Rs.3,000/- for solatium and Rs.2,100/- paise for legal increase against the award of Rs.1,350/- made by the Land Acquisition Officer.

2.3. In Land Reference Case No. 424 of 1989, the respondent claimed Rs.49,120/- for the land, Rs.14,736/- for solatium and Rs.10,315/- for legal increase against the sum of Rs.6,531/- awarded by the Land Acquisition Officer.

2.4. In Land Reference Case No. 425 of 1989, the respondent claimed Rs.72,200/- for the land, Rs.21,660/- for solatium and Rs.15,162/- for legal increase against the sum of Rs.9,747/- awarded by the Land Acquisition Officer.

2.5. The aforesaid references were made on the ground that the Land Acquisition Officer did not determine the correct market value of the lands.

According to them, he ought to have given due consideration to the sale instances pertaining to nearby lands, but instead, he had relied on the sale instances which were not relevant and not comparable.

2.6. The claims of the respondents were resisted by the appellant by filing written statement at Exh. 8 in all the cases. It was averred that the respondents were not entitled to have more compensation than awarded by the Land Acquisition Officer and the award was just and proper. It was contended that all the relevant factors were kept in view by the Land Acquisition Officer and on the basis of the same, the market value of the lands in question was determined. The appellant also raised the dispute that the reference applications were not maintainable because they were filed after expiry of period of limitation. The appellant, therefore, prayed that the reference cases deserved to be dismissed.

2.7. The Court framed the issues at Exh. 6 which were common for all cases. They are as under :-

1. Whether the applicant proved that the amount of compensation awarded by the Land Acquisition Officer is inadequate? If yes, what additional amount of compensation should be awarded to the applicant?

2. Whether the present application is time barred?

3. What order and award?

2.8. The Court treated Reference Case No. 425 of 1989 as the main case and consolidated the other cases with it by order passed below Exh. 10. The evidence was recorded in L.R. Case No. 425 of 1989. The parties led evidence, oral as well as documentary. Respondents examined Jayantilal Narsinhbhai – applicant of L. R. Case No. 425 of 1989 at Exh. 11. They also produced documents comprising extract of revenue records in respect of the lands belonging to them.

2.9. As against that, the appellant examined Rajabhai Ramjibhai Padaya at Exh. 23. He produced on record the copies of sale-deeds at Exhs. 24 and 25. The appellant also examined other witnesses, namely Gangarambhai Valjibhai at Exh. 26, Savabhai Laxmanbhai at Exh. 27 and Maheshbhai Maganbhai Chavda at Exh. 28. The appellant further produced documentary evidence comprising the sketch of irrigation canal, the statement maintained under the Act of Aji-II Irrigation Scheme, copy of the Government Gazette containing notification, etc.

2.10. On the basis of the material produced before it, the Court arrived

at a conclusion that the reference applications were made within the period of limitation prescribed under the Act. It also held that the compensation determined by the Land Acquisition officer was inadequate and it was required to be increased. The Court fully allowed all the claim cases. In L.R. Case No. 425 of 1989 it awarded Rs.99,275/-, in L.R. Case No. 424 of 1989 it awarded Rs.46,241/-, in L.R. Case No. 423 of 1989 it awarded Rs.13,750/- and in L.R. Case No. 422 of 1989 it awarded Rs.7,540/- together with interest at the rate of 12% and also the costs. Hence, these appeals.

3. I have heard Mr. Uday R Bhatt, Ld. AGP for the appellant. The respondents though served, have not remained present either in person or through their advocate. Mr. Bhatt has submitted that the award made by the Court is exorbitant. He has submitted that the Court failed to consider relevant material to decide the question of limitation. According to him, the reference cases were clearly time barred. He has submitted that so far as the Collector is concerned, he is the authority to decide whether application of the claimant for reference under section 18 deserved to be accepted and acted upon. For that purpose he is required to scrutinize the material and only upon finding everything proper, should make the reference. According to Mr. Bhatt, even the Court is saddled with the duty to scrutinize the entire material and then to decide controversies involved in the case. To substantiate his submission, Mr. Bhatt has drawn my attention to relevant provisions of the Act as well as

certain circulars and directions issued by the Government from time to time. He has also relied on judicial decisions rendered by this Court as well as the Apex Court. He has, therefore, prayed that the case be remanded to the concerned Court for its re-consideration by keeping in view the relevant material.

4. I have carefully considered the submissions of Mr. Bhatt. I have also closely perused the record as well as the relevant provisions of the Act. There is no dispute that the lands in question were needed for public purpose and they were acquired by following due procedure. The disputes are only with regard to the quantum of compensation determined by the Land Acquisition Officer as well as expiry of period of limitation. According to the appellant, all the reference cases were time barred. The record shows that specific plea regarding limitation has been raised by the appellant in its written statement and the Court has framed issue No. 2 in respect of the limitation. However, the Court has decided the issue in favour of the original applicants i.e., the respondents holding that the appellant had failed to establish that copy of the award was made available to the respondents after the Land Acquisition Officer pronounced the award on 17/6/1985. The Court also held that the appellant had failed to prove that notices under section 12 (2) of the Act were issued to the respondents. According to the Court, as soon as the respondents learnt about the award, they obtained the certified copy and made the application under section 18 of the Act and, therefore, the reference cases were within time.

4.1. Before I discuss this issue in the light of submissions made by the Ld. AGP, it would be necessary to refer to certain relevant provisions of the Act. After publication of notification under section 4 and declaration under section 6 of the Act, the Collector has to give notice under section 9 to the persons interested. By the said notice, the Collector has to declare the intention of the Government to take possession of the land and call upon persons interested in such land to lodge claim for compensation. He is also required to state particulars of the lands needed for the public purpose and to summon all persons interested in the land to appear personally or by their agent. Section 10 empowers the Collector to require and enforce the making of statements as to names and interests. Section 11 of the Act enjoins the Collector to inquire into the objections, if any, raised by any person interested in pursuance of notice given under section 9 to the measurements made under section 8 and into the value of the land at the date of publication of notification under section 4 of the Act and also into the respective interests of the persons claiming the compensation. He is thereafter, required to make the award. Sub-section (2) of section 11 empowers the Collector to include the matters in the award which have been agreed in writing by the persons interested in the land. Section 11-A prescribes that within two years of the date of publication of the declaration, the Collector shall make award under section 11, failing which the entire proceedings of the acquisition of the land shall lapse. Section 12 requires

complete reproduction, which is as under :-

> **"12. Award of Collector when to be final.-** (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and apportionment of the compensation among the persons interested.
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> (2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made."

Section 16 confers upon the Collector power to take possession and upon taking the possession, the land would vest absolutely in the Government free from all encumbrances. Section 18 is contained in Part-III of the Act, which pertains to reference to Court and procedure thereof. Section 18 reads as under :-

> **"18. Reference to Court.-** (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to be measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.
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> (2) The application shall state the grounds on which objection to the award is taken :
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> Provided that every such application shall be made -

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

Thus upon receiving application under section 18, the Collector is duty bound to examine whether the application is made within period of limitation prescribed by the proviso to section 18, what are the grounds of objection raised in the reference, who are the persons to whom compensation or apportionment of compensation should be paid, etc. Further, making an application under section 18 within the time limit prescribed under section 18(2) is a sine-qua non for a valid reference by the Collector. The Collector also, while making reference under section 18 of the Act, does not act as an agent of the Government, but he acts as a statutory authority exercising his own power. He is, therefore, bound to make the reference in the manner prescribed by section 19 of the Act. Section 19 of the Act reads as under :-

**"19. Collector's statement to the Court.-** (1) In making the reference, the Collector shall state, for the information of the Court, in writing under his hand,-

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reasons to think interested in such land;

(c ) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11;

(cc ) the amount paid or deposited under sub-section (3A) of section 17; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement, shall be attached a Schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by the parties interested, respectively."

4.2. The aforesaid provisions show that sections 18 and 19 of the Act are closely interconnected. When the application for making reference under section 18 is received by the Collector, it is his duty to examine that all the conditions laid down in section 18 are complied with. Here the Collector is required to exercise statutory power of reference. If the application is not made in time, he can reject it as incompetent and refuse to make reference. It is, therefore, duty of the Collector to examine whether the person making the application was present or represented by his agent before him at the time of making the award or whether notice under section 12(2) of the Act had been issued to such person by him. He should also examine the question of

limitation and if it is found that application for reference is not made in time, he should reject it since he does not have any power to condone delay. However, if the application is found to have been made in time, he should act in accordance with section 19 and prepare a statement containing the information as specified in section 19 (1) clauses (a) to (d) and provide it to the Court in writing under his hand. It is also his duty to attach a schedule giving particulars of the notices served upon the claimants and of the statements in writing made or delivered by the parties interested respectively. The State Government has issued from time to time circulars containing the instructions with regard to the manner in which the Collector is supposed to comply with section 19 of the Act. According to these instructions, along with application for reference to the Court, the Collector has to forward copy of the award, but the Collector must not insist upon the person making application to furnish a copy of the award along with the application. He should also before making reference, examine whether the compensation was received under protest or it was received without objection.

4.3. The powers and functions of the Collector have been adequately described by the Apex Court in the decision rendered in the case of Mohammed Hasnuddin v/s. The State of Maharashtra reported in AIR 1979 S.C. 404. In the said decision, the Apex Court has laid down as under :-

> "18. The Allahabad High Court has read more into the decision of the Privy Council in Ezra's case (1905) ILR 32 Cal 605 (supra) than is there.

> Merely because the Collector while making an award under S. 11 or in serving a notice on the owner of the land under S. 12, acts as an agent of the Government, it does not necessarily imply that while making a reference to the court under S. 18, he acts in the capacity of an agent of the Government. While it is true that the Collector in making the award under S. 11 acts as an agent of the Government, he in making a reference to the court under S. 18 acts as a statutory authority. Section 18, sub-section (1) of the Act entrusts to the Collector the statutory duty of making a reference on the fulfillment of the conditions laid down therein. The Collector, therefore, acting under Sec. 18, is nothing but a statutory authority exercising his own powers under the section."

It has further observed as under :-

> "24. The word 'require' in S. 18 of the Act implies compulsion. It carries with it the idea that the written application makes it incumbent on the Collector to make a reference. The Collector is required to make a reference under S. 18 on the fulfillment of certain conditions. The first condition is that there shall be a written application by a person interested who has not accepted the award. The second condition is as to the nature of the objections which may be taken, and the third condition is as to the time within which the application shall be made. The power of the Collector to make a reference under S. 18 is thus circumscribed by the conditions laid down therein, and one condition is the condition regarding limitation to be found in the proviso.
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> 25. The conditions laid down in S. 18 are 'matters of substance and their observance is a condition precedent to the Collector's power of reference', as rightly observed by Chandavarkar J. in Re Land Acquisition Act [supra]. We are inclined to the view that the fulfilment of the conditions, particularly the one regarding limitation, are the conditions subject to which the power of the Collector to make the

reference exists. It must accordingly be held that the making of an application for reference within the time prescribed by proviso to S. 18, sub-sec. (2) is a sine qua non for a valid reference by the Collector."

4.4. Collector's duty and function have been adequately re-emphasized by the Apex Court in a subsequent decision rendered in the case of Ram Kumar v/s. Union of India reported in (1991) 2 S C J 345 it has observed as under :-

"Under Section 18 of the Act the only requirement for the person interested who had not accepted the award was to move a written application to the Collector requiring that the matter be referred for the determination of the Court. One of the grounds for not accepting the award was the amount of compensation. Once such application was moved it was the duty of the Collector to make a reference to the Court. Under Section 19 of the Act, while making the reference the Collector was required to state for the information of the Court the particulars as mentioned in clauses (a) to (d) of sub-section (1) of section 19 of the Act. Thus it was the duty of the collector to mention not only the situation and extent of land but even particulars of any trees, buildings or standing crops thereon. The agriculturist whose land is acquired may not be fully conversant with the khastra No., or area as entered in the Revenue records and the Union of India or the State acquiring such land should not be allowed to take any advantage of such ignorance of the agriculturists. Once an application is moved for making a reference under Section 18 of the Act, it becomes the duty of the Collector to send full information to the Court regarding the entire land acquired and it is thereafter the duty of the Court to decide the matter in accordance with law."

The Collector should also try to see that upon receipt of the

application the reference is made as early as possible, preferably within the time limit prescribed under section 18. If the application is received by him within the prescribed period of limitation, it is not very material whether the reference is made after the expiry of period of limitation, but undue delay may be avoided so that it may not correspondingly increase the interest payable on additional amount in case the reference is ultimately allowed. Even after the statement as prescribed by section 19 is forwarded to the Court, the Collector should not become inactive and leave the things to the Government Pleader alone for contesting the reference. What he is supposed to do after making the reference, I will discuss it little later.

4.5. When reference is made to the Court u/S. 18 of Act for determination of objections raised in respect of matters specified in sub-sec. (1), it is the duty of the Court to see that reference made to it by the Collector is in order and conditions laid down therein are duly complied with so as to give jurisdiction to hear the reference. Under the Act special power is conferred upon the Court and it acts as a Tribunal. It does not act as an appellate Court. The Court has, therefore, to examine all relevant questions including the question of limitation. If it is found that reference is time barred, it can decline to answer the reference. Court has also to examine the documents forwarded by the Collector and if they are found wanting in some respects, it has to call upon the Government to furnish additional documents and information.

4.6. The Apex Court in the case of Ram Kumar v/s. Union of India

[supra], has pointed out the functions and duties of the Court also which acts as a Tribunal of special jurisdiction under section 18 of the Act. It has laid down as under :-

> "26. From these considerations, it follows that the court functioning under the Act being a Tribunal of special jurisdiction it is its duty to see that the reference made to it by the Collector under section 18 complies with the conditions laid down therein so as to give the Court jurisdiction to hear the reference. In view of these principles, we would be extremely reluctant to accept the statement of law laid down by the Allahabad High Court in Abdul Karim's case (AIR 1963 All. 556) (FB) (supra).
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> 27. Every Tribunal of limited jurisdiction is not only entitled but bound to determine whether the matter in which it is asked to exercise its jurisdiction comes within the limit of its special jurisdiction and whether the jurisdiction of such Tribunal is dependent on the existence of certain facts or circumstances. Its obvious duty is to see that these facts and circumstances exist to invest it with jurisdiction and where a Tribunal derives its jurisdiction from the statute that creates it and that statute also defines the conditions under which the Tribunal can function, it goes without saying that before that Tribunal assumes jurisdiction in a matter it must be satisfied that the conditions requisite for its acquiring seisin of that matter have in fact arisen. As observed by the Privy Council in Nusserwanjee Pastonjee v/s. Meer Mynoodeen Khan (1855) 6 Moo Ind App. 134, wherever jurisdiction is given to a Court by an Act of Parliament and such jurisdiction is only given upon certain specified term contained in that Act it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction for if they be not complied with the jurisdiction does not

arise.

28. If an application is made, which is not within time, the Collector will not have the power to make a reference. In order to determine the limits of its own power, it is clear that the Collector will have to decide whether the application presented by the claimant is or is not within time and satisfies the conditions laid down in section 18. Even if a reference is wrongly made by the Collector the Court will still have to determine the validity of the reference because the very jurisdiction of the Court to hear a reference depends on a proper reference being made under section 18, and if the reference is not proper, there is no jurisdiction in the Court to hear the reference. It follows that it is the duty of the Court to see that the statutory conditions laid down in section 18 have been complied with and it is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It is only a valid reference which gives jurisdiction to the court and therefore, the court has to ask itself a question whether it has jurisdiction to entertain the reference.

29. In deciding the question of jurisdiction in a case of reference under section 18 by the Collector to the Court, the Court is certainly not acting as a Court of appeal; it is only discharging the elementary duty of satisfying itself that a reference which it is called upon to decide is a valid and proper reference according to the provisions of the Act under which it is made. That is a basic and preliminary duty which no Tribunal can possibly avoid. The court has, therefore, jurisdiction to decide whether the reference was made beyond the period prescribed by the proviso to sub-section (2) of section 18 and if it finds that it was so made, decline to answer reference."

4.7. In the instant case, it is the say of the appellant that after award

was made under section 11 by the Collector, notices under section 12 (2) had been issued to the persons interested in the land. To support this say, it has relied upon the statement forwarded along with the application under section 18. Now proviso to section 18 (2) of the Act envisages every application for reference to be made in accordance with the period of limitation prescribed by the proviso to section 18(2) of the Act. If the notice is received, application has to be filed within six weeks from the date of receipt. The Court had, therefore, to see whether the application was filed within the period of limitation. At the same time, it was also the duty of the Court to examine the material forwarded to it by the Collector and if everything was found to be in order, then only it should have proceeded further. Whether the Court has discharged its duty and function properly in this case is the question to be considered, which will be done presently.

4.8. Now reverting to the obligations of the Collector after the reference is entertained by the Court, he should see to it that all the necessary documents and information are furnished to the Government Pleader so that the case is dealt with effectively. To enable the Government Pleader to defend the interest of the State properly, he should furnish relevant copies of the sale instances, previous awards, etc., to ensure that the market value is properly determined. He should also see that all the pleas available to the Government in accordance with the facts on record are taken in the written statement and presented properly. Necessary documentary evidence to substantiate these pleas

should be made available to the Government Pleader. In this case, it can be seen from the record that though contention with regard to period of limitation has been raised, no supporting documents in the form of 12 (2) notices have been placed on record. That has prompted the Court to reject the contention of the appellant with regard to bar of limitation. When the documents were in existence and in control of the Government, the Collector should have made it certain that they were produced in the case and properly relied upon. He should not have acted in careless manner so as to give the otherside an advantage which it did not deserve. Under the Act the Collector has to shoulder the responsibility of dealing with public money and due to lack of proper care and the undesired indifference on his part, there should not be unnecessary or undue financial burden on the State exchequer in the form of payment of more than just compensation. The Courts many a times come across cases wherein though there is reasonable chance for the Government to succeed on the ground of bar of limitation, it has not happened so because of the lack of cooperation to Government Pleader from the concerned Government Officers and want of proper coordination between Government Pleader and the Officers. In some cases, the poor performance goes to such an extent that the mind is even tempted to believe that such inaction on the part of all concerned on Government side was deliberate and due to some ulterior motive. Since the Collector functions as the statutory authority and he is a responsible Government Officer, he should not only render or get rendered complete

assistance to the Government Pleader, but also to the Court to enable it to determine just and legal compensation based on correct market value of the land under acquisition.

4.9. From the foregoing discussion, it is clear that under sections 18 and 19 the Collector performs the duties of statutory authority and he has power to comply with all the conditions and requirements laid down in these sections so as to give the Court jurisdiction to hear the reference. However, even when the Collector fails in his duty and does not remain vigilant to see that necessary documents are produced, the Court which acts as special Tribunal is duty bound to call upon the Government to produce the necessary documents including copies of notice under section 12 (2) of the Act and the proof regarding its service on the claimant. It cannot remain silent spectator and allow the public money to be squandered away. The Court even can call upon the Collector to furnish revised statement along with the necessary documents.

4.10. Apart from this, it is also the function and responsibility of the concerned Government Officers to apprise the Government Pleader of complete facts relating to the case, collect all the necessary material, documents and make them available to the Government Pleader as early as possible to enable him to prepare the pleadings and to produce them in evidence.

4.11. For this very purpose, the Government of Gujarat has framed rules for the conduct of the legal affairs of Government. They are known as Law Officers' Rules. Chapter XI of the said rules contains rules for institution

and defence of suits, appeals and other civil proceedings in the mofussil. Part-B contains rules 113 to 123 relating to defence of suits on behalf of Government and Part-C comprises rules pertaining to conduct of suits. It includes rules 124 to 130.

Rule 114A prescribes that the officer concerned has to collect information and forward it to Government Pleader in charge of the case, together with all the necessary documents and inform him of the grounds on which it is proposed to defend the suit.

Rule 121 prescribes duty of Government Pleaders when defence of suit is sanctioned. It is as follows :-

> "121. Duty of Government Pleader when defence of suit is sanctioned.- (1) If the defence of suit against Government is sanctioned or if Government undertakes the defence of a suit an officer in his official capacity, draft of the written statement to be filed in answer to the plaint shall be submitted by the Government Pleader to the Legal Remembrancer for approval and the written statement, as approved or revised by the Legal Remembrancer, shall be subscribed and verified by the Government Pleader. When sending the draft written statement for approval, the Government Pleader should state the date fixed for filing it in Court. Thereafter the Government Pleader should take such other steps for the defence of the suit as may be necessary.
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> (2) In cases in which Government undertakes the defence of a suit against an officer in his official capacity, the Government Resolution or Order sanctioning the defence is to be deemed to be the Government Pleader's authority to appear and answer to the plaint, and he shall at once on receipt thereof move the Court to cause a note of his authority to be entered in the register, but shall not produce such resolution or order

in Court.

(3) A true copy of the issue framed in each suit, as well as of any subsequent amendments of the issue or additional issues under rule 5 of Order XIV of Schedule I to the Civil Procedure Code, shall be sent without delay by the Government Pleader to the Legal Remembrancer."

Rule 124 deals with important points respecting the conduct of suits.

"124. Important points respecting the conduct of suits.- The following important points relating to the conduct of all suits should be carefully attended to by Government Pleaders and all officers concerned :-

(a) no averment should be made in a plaint or in a written statement unless it can be proved from the evidence which is or which may be available.

(b) the evidence, whether oral or documentary, on which it is intended to rely, should be carefully scrutinized by the Government Pleader before it is adduced and he should advise as to its admissibility and its probable importance or unimportance for the purpose of the suit, and suggest what evidence if it be forthcoming, may with advantage be substituted for any which, in his opinion, would be weak or inadmissible.

(c ) xxx xxx xxx

(d) all the witnesses where it is necessary or advisable to examine on behalf of Government should be kept present and produced in Court on the day fixed for hearing. The necessity of making applications for adjournment should, as far as possible, be avoided and such applications on behalf of the opposite party should, unless they are made for sufficient reasons, be resisted as tending to prolong the litigation, and to give opportunities for the fabrication of false evidence;

(e) (h) xxx xxx xxx"

Rule 125 casts duty upon the Collector or other officer to furnish information and prepare evidence. It reads as follows :-

> "125 Collector or other officer to furnish information and prepare evidence.- In cases connected with the departments under the control of the Collector it shall be the duty of the Collector or that of any officer whom he may specially depute for the purpose, and in cases connected with any other department, it shall be the duty of the officer, who proposed the institution or who sought the sanction of government for the defence of the suit, as the case may be, to see that the Government Pleader is thoroughly acquainted with the facts of the case and with the evidence to be adduced on behalf of Government and that all the necessary evidence, both oral or documentary, is ready by the proper time. The Government Pleader shall keep the Collector or other officer concerned informed of the progress of the suit and report to him, with the least possible delay, if any further evidence or information is required, moving the Court if necessary, from time to time, to postpone the case or adjourn the hearing."

Rule 126 requires an officer to be present at trial to aid the the Government Pleader. It reads as under :-

> "126. an officer to be present at trial to aid the the Government Pleader.- When a suit is under trial, an officer thoroughly conversant with the facts of the case and the practice of the department concerned therewith should be deputed to be present to instruct the Government Pleader in regard to any matters which may arise unexpectedly, and to

direct his attention to any document or other evidence, that may become important, at each stage of the trial."

Rule 128 envisages Government Pleader's duties whilst a suit is under trial. Amongst others, it states that it is his responsibility to see that all the evidence available is led before the Court and to thoroughly work up the law applicable to the case.

The Government has, therefore, taken adequate care to see that its cause is properly and adequately safeguarded by all concerned. By the aforesaid provisions, duty and responsibility are cast upon Government Pleaders and Government Officers including the Collector to ensure that the interest of Government is properly defended by submitting proper pleadings, producing all available documentary evidence and examining necessary witnesses.

4.12. Thus, when the provisions of law cast duty upon the collector as well as the Court to act in a particular manner, they should act in that manner alone and not in any other manner. Time and again it has been noticed by this Court that because of the indifference shown by the Government Pleaders and Government Officials while conducting cases under the Act for and on behalf of the Government and the apparently "unconcerned" attitude adopted by the Court while deciding the reference have resulted into creating unnecessary and avoidable burden on the State finance which is ultimately public money. No-doubt, a person is deprived of his land which could be his sole source of livelihood, but nevertheless it is acquired for public purpose. The authority

should remain careful to see that there is no unjust or undeserved benefit derived by such person in the matter of obtaining compensation. What he should get is just and fair compensation, but the experience has shown that in large number of cases, material to substantiate the correct market value is not brought on record from Government's side, though available, either on account of indifference or deliberately for the reasons not far to seek. Such practice is not only to be deprecated, but it has to be totally curbed. In such cases Government should, at appropriate level, inquire into the matter and take stern action against the erring officers. This may curb the menace of corruption by officers who are acting hand-in-glove with the land owners to some extent and reduce the damage that is being caused to the State exchequer.

4.13. The Court is also duty bound to see that the reference is in accordance with section 18 of the Act and the parties before it produce adequate material to enable it to determine just and adequate market value of the land. It should not act in a manner as if it was performing certain idle formalities only and not adequately and effectively dealing with the controversies involved in the case. As already stated above, the Act contains complete machinery to determine just and adequate compensation to be awarded to the land owner for the acquisition of his land, but to run the machinery properly is the function of the Court. In the case of Panchmahals Steel Ltd. V/s. Universal Steel Traders reported in G.L.R. XVI : 1975 p. 942 the learned Single Judge of this Court has aptly said as under :-

> "Law must take note of the existing situation in which problems that arise in law and have a human content have to be disposed of. Law cannot divorce itself of the mores of the day. Philosophy of law is functional and not analytical. Now if law takes note of the existing situation in which a problem has been put in the lap of the Court, a solution must be sought through the machinery of law. Law cannot be static and its interpretation has to be dynamic. Law cannot operate to vacuum. Either by its pragmatic approach or progressive interpretation, law must find and offer a solution or it must perish. ..."

When the legislature has placed complete machinery at the disposal of the Court, it has to utilize it to the fullest extent and justify the confidence reposed in it by the representatives of the society. If the machinery is not used, it will get rusted and gradually die. Compliance of mandatory requirements will be deliberately overlooked and inaction on the part of all concerned will be taken for granted. Brake has to be applied to callous attitude of the Court and '*hand-in-glove'* working of Government agencies with claimants. Sooner the better otherwise the consequences, can be disasterous.

5. Reverting to the case on hand, I have closely perused the record. The Collector's award under section 11 is produced a Exh. 4. It is dated 17/6/1985. The reference has been made in the month of September 1989. By Exh. 3 undertaking has been given to pay the Court fees. On receipt of the application under section 18, which is dated 7th September, 1989, the Collector

has forwarded award with other relevant record to the Court. The statements giving various details regarding the acquisition as well as the land in question have been furnished including statement containing details regarding issuance of notices under various sections, which is at Exh. 6. It shows that notice under section 12(2) of the Act was issued on 1/11/1985. The written statement has been filed at Exh. 12. In the said statement plea regarding limitation has been raised and it is averred that the reference was time barred. In paras. (7) and (10) of the written statement, this pleas has been specifically raised. The Court has also on the basis of this plea framed issue "whether the present application is time barred?" Thus, the aforesaid facts reasonably show that the application under section 18 to the Collector was made much after the expiry of period of limitation. The details with regard to notice under section 12(2) of the Act, which were available with the Collector, should have been produced on record to substantiate the plea with regard to expiry of limitation. The Collector should have taken proper care to see that his officers attending to the proceedings furnished to the concerned Government Pleader all the necessary material to substantiate the pleas taken in the written statement. It was also bounden duty of the Court to see that some unscrupulous officer who joined hands with the claimant and suppressed necessary material and did not make it available to the Government Pleader to effectively prosecute the case, completely failed in their design and should have prevented the claimant from deriving unjust and undue benefit. The Court should have compelled the

Government to make available to it all the necessary documents and to ask it to examine necessary witnesses to prove these documents. Needless to say that in such cases, Court even can take coercive measures against non-cooperative and defaulting officers, if it is found that they are deliberately avoiding to produce the requisite material. This has not happened in the present case. In the circumstances, the judgment and award made by the Court are quashed and set aside. The case is remanded to the trial Court to reconsider the issues of limitation and determination of correct market value in light of the observations made in this judgment. The evidence that has already come on record will remain as it is. The parties will be at liberty to adduce fresh evidence. The Court is directed to complete the hearing and pronounce the award on or before 31st December, 2007. Appeals are allowed accordingly. No orders of costs.

[ Akshay H Mehta, J. ]

* Pansala.